

Exhibit 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,)	CASE NO: 2:13-CV-00193
)	
Plaintiffs,)	CIVIL
)	
vs.)	Corpus Christi, Texas
)	
RICK PERRY, ET AL.,)	Wednesday, March 5, 2014
)	
Defendants.)	(9:27 a.m. to 11:16 a.m.)

MOTION HEARING

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Genay Rogan
Clerk:	Brandy Cortez
Court Security Office:	Adrian Perez
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APPEARANCES FOR:

Plaintiffs:

ARMAND DERFNER, ESQ.
P. O. Box 600
Charleston, SC 29402

CHAD W. DUNN, ESQ.
K. SCOTT BRAZIL, ESQ. (Phone)
Brazil and Dunn
4201 Cypress Creek Parkway
Suite 530
Houston, TX 77068

J. GERALD HEBERT, ESQ. (Phone)
191 Somerville Street
#405
Alexandria, VA 22304

NEIL G. BARON, ESQ.
914 FM 517 Road, W.
Suite 242
Dickinson, TX 77539

EMMA SIMPSON, ESQ. (Phone)
TERESA GUERRA SNELSON, ESQ. (Phone)

**United States
of America:**

ANNA BALDWIN, ESQ.
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
NWB 7273
Washington, DC 20009

ELIZABETH S. WESTFALL, ESQ. (Phone)
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
NW NWB 7125
Washington, DC 20530

DANIEL J. FREEMAN, ESQ.
U.S. Department of Justice
950 Pennsylvania Ave. NW
NWB 7123
Washington, DC 20009

APPEARANCES FOR (Cont'd):

United States of America: JOHN ALBERT SMITH, III, ESQ.
Office of the U.S. Attorney
800 N. Shoreline Boulevard
Suite 500
Corpus Christi, TX 78401

Texas Association of Hispanic County Judges and County Commissioners: ROLANDO L. RIOS, ESQ.
115 E. Travis
Suite 1654
San Antonio, TX 78205

PRESTON E. HENRICHSON, ESQ. (Phone)
222 W. Cano
Edinburg, TX 78539

Oscar Ortiz, et al.: JOSE GARZA, ESQ.
7414 Robin Rest Dr.
San Antonio, TX 78209

State of Texas: JOHN BARRET SCOTT, ESQ.
Scott, Yung, L.L.P.
208 N. Market Street
Suite 200
Dallas, TX 75202

JOHN REED CLAY, JR., ESQ.
S. RONALD KEISTER, ESQ. (Phone)
Office of the Attorney General
P. O. Box 12548
MC001
Austin, TX 78711-2548

DAVID WHITLEY, ESQ.

Texas League of Young Voters Education Fund: RYAN HAYGOOD, ESQ.
NATASHA KORGAONKAR, ESQ.
NAACP Legal Def and Educational Fund, Inc.
40 Rector Street
5th Floor
New York, NY 10006

M. HASAN ALI, ESQ. (Phone)
Wilmer Cutler Pickering, et al.
1875 Pennsylvania Ave. NW
Washington, DC 20006

APPEARANCES FOR (Cont'd):

Mexican American
Legislative Caucus,
et al.:

EZRA D. ROSENBERG, ESQ.
Dechert, LLP
902 Carnegie Center
Suite 500
Princeton, NJ 08540-6531

DANIEL COVICH, ESQ.
GARY BLEDSOE, ESQ. (Phone)

VISHAL AGRAHARKAR, ESQ. (Phone)
Brennan Center for Justice
NYU School of Law
161 Avenue of the Americas
12th Floor
New York, NY 10013

Texas State Conference
of NAACP Branches:

ERANDI ZAMORA, ESQ.
MARK A. POSNER, ESQ. (Phone)
Lawyers' Committee of Civil Rights
Under Law
1401 New York Ave., Suite 400
Washington, DC 20005

1 **Corpus Christi, Texas; Wednesday, March 5, 2014; 9:27 a.m.**

2 **(Call to Order)**

3 **(Courtroom and Telephonic Appearances)**

4 **THE COURT:** Court calls Cause Number 2:13-193,
5 Veasey, et al, versus Perry, et al.

6 We'll start with the plaintiffs, if, I guess, counsel
7 representing Veasey and LULAC plaintiffs -- go ahead.

8 **MR. DUNN:** Good morning, your Honor.

9 **THE COURT:** You're over here. You were there last
10 time.

11 **MR. DUNN:** Yes. I've somehow or another switched
12 around. My name is Chad Dunn. I'm -- here with me in the
13 courtroom is Armand Derfner, Teresa Guerra Snelson, and Neil
14 Baron. We also have Gerry Hebert and Emma Simpson on the
15 telephone.

16 **THE COURT:** Okay. You're going to be speaking today?

17 **MR. DUNN:** Yes, on -- principally, yes, Judge.

18 **THE COURT:** All right. Government, The United States
19 of America?

20 **MR. FREEMAN:** Good morning, your Honor.

21 **THE COURT:** Morning.

22 **MR. FREEMAN:** Dan Freeman on behalf of the United
23 States. With me in the courtroom are my colleagues, Anna
24 Baldwin and John Smith, and on the phone are a host of others.

25 **THE COURT:** Okay.

1 Redmond establish that there is no -- that any comity interest
2 that might support a state legislative privilege simply is
3 overcome by an important federal interest, such as federal
4 criminal prosecutions. And that doctrine is not limited to
5 federal prosecutions and should certainly apply in an important
6 context such as this. And, as a result, the United States is
7 not aware of any case in which a court has declined to provide
8 documents to the United States when the United States has
9 brought a Section 2 case, and it is not aware of any case in
10 which a court has issued a blanket prohibition on production of
11 internal legislative documents even when there are private
12 plaintiffs who have brought the suit. The court has at least
13 required the production of some documents in all of the cases
14 of which the United States is aware.

15 **THE COURT:** And I think that's where the issue is;
16 what documents.

17 **MR. FREEMAN:** Well, your Honor, there are a few
18 different approaches that courts have taken. In some cases,
19 such as *Perez*, the court has required a full production under
20 seal. In other cases, such as *Favors v. Cuomo*, the court has
21 undergone an in-camera review. However, that in-camera review
22 is still ongoing after over a year. And, so, under this
23 Court's schedule, the United States believes that if this Court
24 only thinks that a subset of documents are relevant,
25 unfortunately, it's not really possible from defendant's

1 privilege logs to identify exactly which documents are the most
2 appropriate, as they're all relevant, and the privilege log
3 merely establishes that they are internal to the legislature.

4 And, so, likely the best procedure would be a production under
5 seal, as the -- as the Court carried out in *Perez*, and if the
6 parties want to introduce those documents in court, we could
7 subsequently discuss individual documents, and there would be
8 no negative effect on the legislature, as the documents would
9 be produced either subject to the protective order that's
10 already in place or under seal.

11 **MR. CLAY:** Well, I think all of this kind of gets to
12 the point of that we've put the cart before the horse here.
13 We're talking in broad strokes about a legislative privilege
14 and -- and about the amorphous contours of that privilege. But
15 we don't have -- if we had gone about this the correct way,
16 which is subpoenaing various legislators or the Attorney
17 General's office with respect to specific documents, we might
18 be in a better position to discuss the actual contours and
19 whether a particular document is or is not subject to a
20 privilege.

21 **THE COURT:** Okay. Well, let me just say; the ones
22 that have waived the privilege, I don't need to deal with them
23 at all. Correct?

24 **MR. CLAY:** That's correct.

25 **THE COURT:** They're going to provide whatever needs

1 attorney here, it's just an attorney was copied; or there is
2 not an attorney relationship here. You all haven't discussed
3 those documents?

4 **MR. CLAY:** No. They did not -- they have not brought
5 up any individual documents which they believe are -- are --

6 **THE COURT:** Isn't that the way this works, that you
7 all -- Government needs to point out to them why these
8 documents are not based on your privilege log, why these are
9 not protected by the privilege?

10 **MR. FREEMAN:** If I may, your Honor, the United States
11 raised two specific category -- two specific instances in the
12 privilege logs that clearly addressed policy matters. There
13 were policy memos contained within the speaker's office, and I
14 believe within the lieutenant governor's office there was --
15 there were e-mails addressing polling data. However, in most
16 cases the privilege logs are not sufficiently specific for the
17 United States to be able to determine whether or not they
18 address --

19 **THE COURT:** Okay. Have you all sat down and talked
20 about that? Look, these documents here, clearly not covered;
21 you've given defendants a chance to look at that. These
22 documents, I'm not clear on what this is, to determine if there
23 is a privilege.

24 **MR. FREEMAN:** Your Honor --

25 **THE COURT:** Because if you can't do it, I certainly